

032765

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TETRA PAK, INC.,

Plaintiff

V.

PALOS GARZA FORWARDING
LLC, LINCOLN FREIGHT
COMPANY LLC, SET-FREIGHT
INTERNATIONAL, LLC, and
B M EXPRESS INC.,

Defendants

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CAUSE NO. _____

Complaint

Tetra Pak, Inc. (“Tetra”), Plaintiff herein, by its attorneys, Hill Rivkins LLP, complains of the above-named Defendants, Palos Garza Forwarding LLC (“Palos”), Lincoln Freight Company LLC (“Lincoln”), Set-Freight International, LLC (“Set”), and B M Express Inc. (“BM”), and alleges upon information and belief as follows:

Jurisdiction

1. This is a claim against Defendants Lincoln and BM involving interstate transportation by truck under 28 U.S.C. § 1331 and 28 U.S.C. § 1337, and the amount in controversy exceeds \$10,000.00. The Court has supplemental jurisdiction over the claims against Defendants Palos and Set (Palos as a freight forwarder, Set as a freight broker) pursuant to 28 U.S.C. § 1367(a).

Parties

2. At and during all the times hereinafter mentioned, Plaintiff had and now has the legal status and principal offices and places of business stated in Schedule A attached.

3. At and during all times hereinafter mentioned, Defendant Palos had and now has the legal status and office and place of business stated in Schedule A, and was and now is engaged in business as a freight forwarder. Palos may be served with complaint and summons through its registered agent, Ruben Flores Jr., at 9901 IH-10 West, Colonnade Bldg., Suite 777, San Antonio, TX 78230. In the alternative, Palos may be served with complaint and summons through any corporate officer at its home office address, 8417 Amparan Road, Laredo, Texas 78045.

4. At and during all times hereinafter mentioned, Defendant Lincoln had and now has the legal status and office and place of business stated in Schedule A, and was and now is engaged in business as an interstate carrier of goods by truck. Lincoln may be served with complaint and summons through its registered agent, Mario Palos Garza, at 8417 Amparan Road, Laredo, Texas 78045. In the alternative, Lincoln may be served with complaint and summons through any corporate officer or through Ruben Flores Jr. at 9901 IH-10 West, Colonnade Bldg., Suite 777, San Antonio, TX 78230.

5. At and during all times hereinafter mentioned, Defendant Set had and now has the legal status and office and place of business stated in Schedule A, and was and now is engaged in business as a freight broker. Set may be served with complaint and summons through its registered agent, Ruben Flores Jr., at 9901 IH-10 West, Colonnade Bldg., Suite 777, San Antonio, TX 78230. In the alternative, Set may be served with complaint and summons through any corporate officer at its home office address, 8417 Amparan Road, Laredo, Texas 78045.

6. At and during all times hereinafter mentioned, Defendant BM had and now has the legal status and office and place of business stated in Schedule A, and was and now is engaged in business as an interstate carrier of goods by truck. Palos may be served with complaint and summons through its FMCSA registered agent, Truck Process Agents of America, Inc., through its Texas process agent, Maria Garcia, at 1519 Wyoming, El Paso, Texas 79902.

Facts / Causes of Action

7. On or about the date and at the place of shipment stated in Schedule A, there was delivered to Defendant Palos, in good order and condition, the shipment described in Schedule A (laminated milk cartons). Defendant Palos received, accepted and agreed to arrange for transportation of the cargo for certain consideration to the place of destination stated in Schedule A.

8. Defendant Palos, a freight forwarder, brokered the cargo to Defendant Set, a freight broker. Defendant Set then brokered the load to Defendant Lincoln, an interstate common carrier, to transport the cargo from Texas to California. Defendant Lincoln then subcontracted the transportation of the cargo to Defendant BM, also an interstate common carrier.

9. The truck carrying the cargo was involved in an accident while being transported by Defendant BM from Texas to California. The cargo was delivered in a destroyed condition which rendered the cargo worthless and unsalvageable as containers for food-grade material.

10. By reason of the premises, Defendants Lincoln and BM breached, failed and violated their duties and obligations as common carriers and were otherwise at fault.

11. As freight forwarders / freight brokers, Defendants Palos and Set had a legal duty to:
a) select a competent carrier to transport the cargo; and b) verify that the carrier had proper insurance in place to cover damage to or loss of the cargo during transportation.

12. Defendants Palos and Set utilized Defendants Lincoln and BM to transport the cargo even though Defendant BM had been in business for less than six months and neither Defendant Lincoln nor Defendant BM had cargo insurance.

13. By reason of the premises, Defendants Palos and Set breached, failed and violated their duties and obligations as freight forwarders / freight brokers and were otherwise at fault.

14. Tetra was the shipper, consignee or owner of the shipment described in Schedule A, and brings this claim on its own behalf and, as agent and trustee, on behalf of and for the interest of all parties who may be or become interested in the shipment, as their respective interests may ultimately appear, and Tetra is entitled to maintain this action.

15. Tetra has duly performed all duties and obligations on its part to be performed.

Damages

16. By reason of the premises, Tetra has sustained damages, as nearly as same can now be estimated, no part of which has been paid although duly demanded, in the amount of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00).

Prayer

17. All and singular the premises are true and within the jurisdiction of this Honorable Court.

WHEREFORE, Tetra prays:

1. That a judgment may be entered in favor of Tetra against Defendants, jointly and severally, for the amount of Tetra's damages, together with interest and the costs and disbursements of this action; and
2. That this Court will grant to Tetra such other and further relief as may be just and proper.

Respectfully submitted,

/s Robert Glen Moll
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ATTORNEY FOR PLAINTIFF
TETRA PAK, INC.

SCHEDULE A

Legal Status and Place of Business of Parties

Plaintiff, **Tetra Pak, Inc.**, was and now is a corporation or other business entity with an office and place of business at:

3300 Airport Road
Denton, TX 76207

Defendant, **Palos Garza Forwarding LLC**, is a corporation or other business entity, with power to sue and be sued, which regularly engages in business in Texas as a freight forwarder, with a principal office and place of business at:

8417 Amparan Road
Laredo, TX 78045

Defendant, **Lincoln Freight Company LLC**, is a corporation or other business entity, with power to sue and be sued, which regularly engages in business in Texas as an interstate common carrier of goods, with a principal office and place of business at:

8417 Amparan Road
Laredo, TX 78045

Defendant, **Set-Freight International, LLC**, is a corporation or other business entity, with power to sue and be sued, which regularly engages in business in Texas as a freight broker, with a principal office and place of business at:

8417 Amparan Road
Laredo, TX 78045

Defendant, **B M Express Inc.**, is a corporation or other business entity, with power to sue and be sued, which regularly engages in business in Texas as an interstate common carrier of goods, with a principal office and place of business at:

3150 Panama Lane, Suite E
Bakersfield, CA 93313

Description of Shipment

Date of Shipment: June 3, 2014

Place of Shipment: Laredo, Texas

Place of Delivery: Modesto, California

Shipper: Tetra Pak, Inc.

Consignee: Sunopta Food Group LLC

Description of Shipment: Laminated Milk Cartons

Nature of Loss or Damage: Physical Damage / Destruction

Amount: \$100,000.00